



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

OCT 20 2004

**FIRST CLASS MAIL**

Karl Sandstrom, Esq.  
Perkins Coie  
607 14<sup>th</sup> Street, NW  
Washington, DC 20005

RE:

Environment 2004 PAC, and Miranda  
Anderson, as Treasurer  
Environment 2004 527

Dear Mr. Sandstrom:

On April 7, 2004, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, the Commission, on September 28, 2004, found that there is reason to believe that Environment 2004 PAC, and Miranda Anderson, as Treasurer, and Environment 2004 527, violated 2 U.S.C. §§ 434, 441a(f), 441b(a) and 11 CFR §§102.5, 104.10, 106.1 and 106.6, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Please note that respondents have an obligation to preserve all documents, records and materials relating to the Commission's investigation.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with your responses

within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

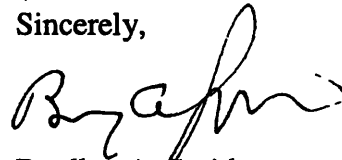
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Brant Levine, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Chairman

Enclosures

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**Respondents:**

Environment2004 PAC and Miranda Anderson, as  
treasurer

Environment2004 527

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission ("the Commission") by Bush-Cheney '04, Inc. *See* 2 U.S.C. § 437g(a)(1). The complaint alleges that Environment2004 is violating federal campaign finance laws by spending funds, raised outside the limitations and prohibitions of the Federal Election Campaign Act of 1971, amended ("the Act"), to influence the upcoming presidential election. Environment2004 argues in response to the complaint that, as a matter of law, its activities do not result in violations of the Act.

Environment2004 appears to be operating as a nonconnected political committee with federal and nonfederal accounts, as described in 11 C.F.R. § 102.5. Accordingly, Environment2004 must comply with the Act's contribution limitations, source prohibitions, and reporting requirements, as well as with applicable statutory and regulatory provisions as interpreted in Advisory Opinion 2003-37 (Americans for a Better Country), which addresses the application of the Act and regulations to various campaign activities of a registered political committee.

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**II. FACTUAL AND LEGAL ANALYSIS**

**A. Facts**

Environment2004 PAC is a political committee registered with the Commission as the separate segregated fund of Environment2004, Inc. Environment2004 527 is an organization registered under Section 527 of the Internal Revenue Code that files reports with the IRS. In its filings with the IRS, Environment2004 asserts that its purpose is “[t]o raise the profile of energy and environment as issues vital to the future of our nation and world, and build a nationwide grassroots network of activists that will work to assure that these issues remain in the forefront of the national agenda.”

Environment2004 describes itself as “a membership organization dedicated to ... shining a spotlight on the anti-environmental record of President George W. Bush and his allies [and] to assuring their defeat in 2004.” Environment2004’s website prominently criticizes President Bush’s environmental record and Environment2004 has issued at least seven press releases denouncing President Bush’s environmental policies.

Environment2004, together with the League of Conservation Voters, also produced a television commercial that aired from May 18-25, 2004, which criticized President Bush’s support for drilling off the coast of Florida. The 527 organization, in its second quarter 2004 IRS filing, stated that it spent approximately \$10,000 on media buys. Environment2004 PAC, in its filings for the same period, did not list any media buys. Thus, the communication appears to have been funded with nonfederal funds.

**B. Analysis**

In Advisory Opinion 2003-37, the Commission analyzed numerous proposed activities by a political committee with federal and nonfederal accounts, including solicitations and communications referring to a clearly identified federal candidate, voter identification and

1 registration activities, get-out-the-vote (“GOTV”) activities, and fundraising. The Commission  
2 determined that many of these activities were covered by the allocation regulations in 11 C.F.R.  
3 Part 106, and as for other activities not specifically covered by Part 106, the Commission  
4 identified the appropriate allocation ratio called for by the Act, as clarified by the recent ruling in  
5 *McConnell v. FEC*, 540 U.S. 93 (2003). AO 2003-37 at 2. Specifically, the Commission  
6 concluded that:

- 7 • Communications by a registered political committee, including fundraising  
8 communications, that promote, support, attack, or oppose a clearly identified  
9 federal candidate are “expenditures” that must be paid for with federal funds;
- 10 • Communications by a registered political committee for voter mobilization  
11 activities, even if they are not coordinated with a candidate and do not refer to any  
12 clearly identified federal candidate, must be funded at least partially with federal  
13 funds;<sup>1</sup>
- 14 • Funds received by a registered political committee from solicitations that  
15 promote, support, attack, or oppose federal candidates and “convey a plan” to  
16 promote, support, attack, or oppose federal candidates are treated as contributions;  
17 and
- 18 • Voter registration efforts of a registered political committee that target particular  
19 groups of voters must either be allocated or paid from federal funds.

20 See AO 2003-37 at 2-4, 9-10, 13, 15, and 20.<sup>2</sup>

21 Because Environment2004’s website contains solicitations and promotes, supports,  
22 attacks, or opposes federal candidates and conveys a plan (or indicates that the funds will be  
23 used) to promote, support, attack, or oppose federal candidates, any funds received should be

<sup>1</sup> The term “voter mobilization activity” refers generally to voter identification, voter registration, and GOTV activities. See 11 C.F.R. § 106.6(b)(2)(iii). The expenses for voter mobilization activity must be allocated between the federal and nonfederal accounts of the committee based on the ratio of federal expenditures to total federal and nonfederal disbursements made by the committee during the two-year federal election cycle. AO 2003-37 at 4 (citing 11 C.F.R. § 106.6(c)). Communications made by a political committee for voter mobilization activities that refer to more than one clearly identified federal candidate—or to federal candidates and nonfederal candidates (or the entire ticket)—must be allocated to each such candidate according to the benefit reasonably expected to be derived. AO 2003-37 at 3 (citing 11 C.F.R. § 106.1).

<sup>2</sup> The interpretation of the Act “by the FEC through its regulations and advisory opinions is entitled to due deference and is to be accepted by the court unless demonstrably irrational or clearly contrary to the plain meaning of the statute.” *FEC v. Ted Haley Cong. Comm.*, 852 F.2d 1111, 1115 (9<sup>th</sup> Cir. 1988).

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1 treated as contributions and reported to the Commission. AO 2003-37 at 20. Additionally, if  
2 Environment2004's solicitations convey a plan to use funds to support or oppose specific federal  
3 candidates, they must be funded from Environment2004's federal account. See AO 2003-37 at  
4 9-10, 14-15, 19-20. It appears that Environment2004 may have used nonfederal funds to pay for  
5 these solicitations and that Environment2004 may have deposited funds received from online  
6 solicitations into its nonfederal account.

7 In addition to its website solicitation, LCV has run at least one television advertisement.  
8 Because this advertisement constituted a public communication that promotes, supports, attacks  
9 or opposes a clearly identified federal candidate, it must be funded from Environment2004's  
10 federal account. See AO 2003-37 at 9-10. Given the reported disbursements by  
11 Environment2004 527 for a media buy, there is reason to believe that Environment2004 has  
12 improperly used nonfederal funds for federal expenditures in violation of the Act and  
13 regulations, as interpreted by the Commission in AO 2003-37.

14 **C. Conclusion**

15 The Commission finds reason to believe that Environment2004 PAC and Miranda  
16 Anderson, as treasurer, and Environment2004 527 violated 2 U.S.C. §§ 434, 441a(f), 441b(a)  
17 and 11 C.F.R. §§ 102.5, 104.10, 106.1 and 106.6.

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